to the most recently completed calendar year.

(9) Number of vessel operating days pertaining to data reported in paragraph (b)(8) of this section for the year ending December 31. For purposes of this regulation an operating day is defined as any day on which a vessel or barge unit is in a seaworthy condition, fully manned, and either in operation or standing ready to begin operations.

(c) *Required port and cargo handling information.* The following port and cargo handling costs shall be provided for each cargo preference voyage within 60 days of the termination of the voyage, identifying the vessel, cargo and tonnage, and round-trip voyage itinerary including dates of arrival and departure at port or ports of loading and discharge.

(1) *Port expenses.* Total expenses or fees, by port, for pilots, tugs, line handlers, wharfage, port charges, fresh water, lighthouse dues, quarantine service, customs charges, shifting expense, and any other appropriate expense.

(2) *Cargo expense.* Separately list expenses or fees for stevedores, elevators, equipment, and any other appropriate expenses other than dispatch.

(3) *Extra cargo expenses.* Separately list expenses or fees for vacuvators and/or cranes, lightening (indicate tons moved and cost per ton), grain-to-grain cleaning of holds or tanks and any other appropriate expenses.

(4) *Canal expenses.* Total expenses or fees for agents, tolls (light or loaded), tugs, pilots, lock tenders and boats, and any other appropriate expenses. Indicate waiting time and time of passage.

(d) *Other requirements.* Unless otherwise provided, operators shall use 46 CFR part 232, Uniform Financial Reporting Requirements for guidance in submitting cost data. Data requirements stipulated in paragraph (b) of this section that are not included under those reporting instructions shall be submitted in a similar format. If the operator has already submitted to MARAD, for other purposes, any data required under paragraph (b) of this section its submission need not be duplicated to satisfy the requirements of this regulation.

(e) *Presumption of confidentiality.* MARAD will initially presume that the material submitted in accordance with the requirements of these regulations is privileged or confidential within the meaning of 5 U.S.C. 552(b)(4). In the event of a subsequent request for any portion of that data under 5 U.S.C. 552, MARAD will inform the submitter of such request and allow the opportunity to comment. The submitter shall claim confidentiality at that time by memorandum or letter, stating the basis, in detail, for such assertion of exemption to disclosure, including, but not limited to, statutory and decisional authorities. Those parts not so claimed will be subject to initial determination by the Freedom of Information Act Officer.

(Approved by the Office of Management and Budget under control number 2133–0514)

[54 FR 49088, Nov. 29, 1989, as amended at 56 FR 57808, Nov. 14, 1991]

§ 382.3 Determination of fair and reasonable rates.

Fair and reasonable rates for the carriage of preference cargoes on U.S.-flag commercial vessels shall be determined as follows:

(a) *Operating cost component.* An operating cost component, based on actual operating costs of each participating vessel, shall be determined on the basis of operating cost data for the calendar year immediately preceding the current year that has been submitted in accordance with § 382.2. The operating cost component shall include all operating cost categories, as defined by 46 CFR 232.5, Form MA–172 Schedule 301, Operating Expenses. (For purposes of this rule, charter hire expenses are not considered operating costs.) Such data shall be escalated by MARAD yearly to the current period utilizing escalation factors for wage and nonwage costs applied to those cost categories in escalating operating subsidy costs for the same period. Fuel costs shall be determined individually based on the actual fuel consumptions, at sea and in port, for each vessel and current fuel prices in effect at the time of the preference cargo voyage(s).

(b) *Capital component*— (1) *General.* A capital cost component shall be constructed for each eligible vessel consisting of vessel depreciation, interest, return on working capital, and return on equity.

(2) *Items included.* The capital cost component shall include:

(i) *Depreciation.* The owner's capitalized vessel cost, including capitalized improvements, shall be depreciated on a straight-line basis over a 20-year economic life, unless the owner has purchased or reconstructed the vessel when its age was greater than 10 years old. To the extent a vessel is chartered or leased, the operator shall submit the capitalized cost and imputed interest rate (in the event these items are not furnished they shall be constructed by MARAD). When vessels more than 10 years old are purchased, a depreciation period of 10 years shall be used. Capitalized improvements made to vessels more than 10 years old will be depreciated over a 10-year period. When vessels more than 10 years old are reconstructed, MARAD will determine the depreciation period. The residual value of the vessel shall be assumed to be 2.5 percent of total capitalized cost.

(ii) *Interest.* The cost of debt shall be determined by applying the vessel owner's actual interest rate to the outstanding vessel indebtedness. It shall be assumed that original vessel indebtedness is 75 percent of the owner's capitalized vessel cost, including capitalized improvements, and that annual principal payments are made in equal installments over the 20-year economic life. If an actual interest rate is not available, MARAD shall select an appropriate interest rate. Where an operator uses a variable interest rate, the operator's actual interest rate at the time of calculation of the guideline rate shall be used. A current long-term interest rate (the title XI rate if available) will be used for operators without vessel debt.

(iii) *Return on working capital.* Working capital shall equal the dollar amount necessary to cover 100 percent of the operating and voyage costs of the vessel for the voyage. The rate of return shall be based on an average of the most recent return of stockholders' equity for a cross section of transportation companies, including maritime companies.

(iv) *Return on equity.* The rate of return on equity shall be the same rate as described in paragraph (b)(2)(iii) of this section. For the purpose of determining equity, it shall be assumed that the vessel's constructed net book value, less outstanding constructed principal, is equity. The constructed net book value shall equal the owner's capitalized cost minus accumulated straight-line depreciation.

(3) *Voyage component.* The annual depreciation, interest, and return on equity shall be divided by 300 vessel operating days to yield the daily cost factors. Total voyage days shall be applied to the daily cost factors and totaled with the return on working capital for the voyage to determine the daily capital cost component.

(c) *Port and cargo handling cost component.* MARAD shall calculate an estimate of all port and cargo handling costs on the basis of the reported cargo tender terms. The port and cargo handling cost component shall be based on the most current information available verified by information submitted in accordance with § 382.2(c), or as otherwise determined by MARAD.

(d) *Brokerage and overhead component.* An allowance for broker's commission and overhead expenses of 8.5 percent shall be added to the sum of the operating cost component, the capital cost component, and the port and cargo handling cost component.

(e) *Determination of voyage days.* The following assumptions shall be made in determining the number of preference cargo voyage days:

(1) The voyage shall be round-trip with the return in ballast, unless the vessel is scrapped or sold immediately after discharge of the preference cargo. In this event, only voyage days from the load port to the discharge port, including time allowed to discharge, shall be included. In the event a backhaul cargo is obtained, an adjustment to allowable voyage days shall be made.

(2) Cargo is loaded and discharged as per cargo tender terms interpreted in accordance with the ''international rules for the interpretation of trade terms'' (INCOTERMS).

(3) Total loading and discharge time includes the addition of a factor to account for delays and days not worked.

(4) One extra port day is included at each anticipated bunkering port.

(5) An allowance shall be included for canal transits, when appropriate.

(6) Transit time shall be based on the vessel's normal operating speed, and shall include for single unit vessels and fully integrated tug/barge units (ITB's), as defined by the definition of Pushing Mode ITB contained in U.S. Coast Guard Navigation and Vessel Inspection Circular 2–18, change 1, enclosure (1), an additional five percent to account for weather conditions. An allowance of ten percent shall be added for all other tug/barge units.

(f) *Determination of cargo carried.* The amount of cargo tonnage used to calculate the rate shall be based on the charter party terms. However, in no case shall less than 70 percent of deadweight be used for rate calculation purposes. In instances when separate parcels of preference cargo are booked or considered for booking on the same vessel, whether under a single program or different programs, a guideline rate for each parcel shall be provided based on the combined voyage.

(g) *Total rate.* The fair and reasonable rate shall be the total of the operating cost component, the capital cost component, the port and cargo handling cost component, and the broker's commission and overhead component divided by the amount of cargo to be carried as determined by paragraph (f) of this section, expressed as cost per ton.

§382.4 Waiver.

In special circumstances and for good cause shown, the procedures prescribed in this part may be waived in keeping with the circumstances of the present, so long as the procedures adopted are consistent with the Act and with the intent of these regulations.

PART 383—DETERMINATION OF FAIR AND REASONABLE GUIDELINE RATES FOR THE CARRIAGE OF LESS-THAN-SHIPLOAD LOTS OF BULK PREFERENCE CARGOES CARRIED ON U.S.-FLAG LINER VESSELS

AUTHORITY: 46 App. U.S.C. 1114(b), 1241(b); 49 CFR 1.66.

SOURCE: 57 FR 21036, May 18, 1992, unless otherwise noted.

§383.1 Scope.

Part 383 prescribes regulations applying to the waterborne transportation of dry bulk preference cargoes in less than full shiploads on U.S.-flag commercial liner vessels. These regulations contain the method that the Maritime Administration (MARAD) shall use in calculating fair and reasonable rates, and the type of information that shall be submitted by liner operators interested in carrying such preference cargoes. For the purpose of these regulations, the term *less-than-full shipload* shall include all cargoes up to the full deadweight capacity of the specific vessel used by an operator in the carriage of a preference cargo, provided that said vessel has beeen engaged in the liner trades. For these purposes, Liner Trades is defined as service provided on an advertised schedule, giving relatively frequent sailings between specific U.S. ports or ranges and designated foreign ports or ranges.

§383.2 Data submission.

(a) *General.* Operators wishing to employ liner vessels in the carriage of liner parcels of dry bulk preference cargoes shall submit information, as